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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
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Statement Of
Mr. James E. Webb, Administrator
National Aeronautics and Space Administration
Before the
Committee on Aeronautical and Space Sciences
United States Senate

Mr. Chairman and Members of the Committee:

You will recall that on May 16 I discussed with the Committee the provisions of S.1857, a bill to amend the National Aeronautics and Space Act of 1958 in several respects. In particular, the Committee focused its attention on the proposed grant of statutory authority contained in the bill to permit NASA to indemnify its research and development contractors against unusually hazardous risks. In the course of the hearing, members of the Committee suggested certain amendments to the bill that appeared desirable, and at the conclusion of the hearing NASA was asked to re-examine section 1(e) of S.1857 in order to reflect the suggestions of some of the Committee members.

We have done this, and I am here today at your request to present the revisions which I feel substantially improve the proposed legislation.

In order to highlight the revisions proposed, we have submitted to the Committee a draft that reflects the additions to and deletions from section 1(e) of S.1857. Deletions are indicated by brackets; additions by underlining.

The first revision consists of adding words to subsection (a) of the proposed indemnification legislation to make it clear that not all contracts for research and development, but only those that involve risks of an unusually hazardous nature, are intended to be covered. Although we had interpreted subsection (a) of S.1857 to be limited to such contracts, and the military departments have so interpreted and administered the provisions of 10 U.S.C. 2354, containing language identical to subsection (a), the addition of this new language would resolve any remaining doubts.

The second change is found in subsection (a)(1), where you will see that the words "liability" and "to" have been added. This revision was prompted by the fear

expressed by several members of the Committee on May 16 that this grant of legislative authority might create rights and liabilities that would not otherwise exist but for the enactment of the proposed section 308 into law. As we explained in our testimony, this is not NASA's intention or desire. Moreover, the military departments do not so interpret the provisions of 10 U.S.C. 2354, where the word "claims" appears in subsection (a)(1). Nevertheless, deletion of the words "claims by" and substitution of "liability to" would appear to make our intention clearer and to constitute an improvement of the bill's language. In addition, we propose adding a new subsection (h) which would specifically limit the effect of the proposed section to providing indemnification to contractors rather than creating any new rights in third persons.

The third revision would further amend subsection (a)(1) to make it clear that, to the extent that liability to employees of contractors arises out of state or Federal workmen's compensation acts, the remedy provided in such statutes would be exclusive. Such liability would, therefore, be excluded from any indemnification coverage authorized under subsection (a)(1).

The fourth revision, which would modify subsection (b)(2), would limit the right of participation of the United States in the defense of suits or claims against contractors to those suits or claims for which indemnification is provided. This would be consistent with existing practice in the case of suits and claims arising under Government contracts.

The fifth revision arises out of comments made by Senator Bridges on May 16 and endorsed by other members of the Committee. This matter relates to the procedures for making payments for claims of contractors arising out of incidents that fall within the indemnification coverage of NASA contracts. We propose the deletion of subsection (d) in its entirety and the substitution of a new subsection, as set forth in our draft. You will observe that this change would permit payment to be made from funds obligated for the performance of the contract concerned or from funds available for research and development, and not otherwise obligated, where the total amount of claims arising out of a single incident does not exceed $100,000. However, in such cases, a full and complete report concerning the amount of claims and the basis for payment would

be required to be made to this Committee and to its counterpart in the House of Representatives. The details of this procedure are spelled out in subsection (d)(2). With respect to claims totaling more than $100,000, subsection (d)(1) would require a specific appropriation by the Congress before payments could be made.

In this connection, the Committee will recall that during the hearing on May 16 Senator Smith asked if NASA would be agreeable to having the Attorney General review its findings on claims in excess of a certain amount, and I replied in the affirmative. It seems to us that the procedure spelled out in the revised subsection (d) would take care of this point, since it enables the Senate and House Committees to refer any proposed payment to the Department of Justice for review before disbursement is actually made by NASA. It would seem unnecessary to write into the bill a provision requiring NASA to refer proposed payments to the Department of Justice for review before reporting them to the Committees. However, if the Committee feels otherwise, we would recommend that referral to the Department of Justice by NASA be limited to the class of payments described in subsection (d)(1), which

would require a specific appropriation by the Congress before payment could be made.

Subsection (e) is an entirely new provision patterned generally after section 170b. of the Atomic Energy Act (42 U.S.C. 2210(b)). It would require contractors of NASA to acquire financial protection from private sources of such types and in such amounts as NASA would require. The amount of financial protection would be the maximum amount of insurance available from private sources, except that NASA could establish a lesser amount taking into consideration the cost and terms of private insurance. In adding this subsection to the bill, it would be made clear that NASA has no intention of acting as an insurer where commercial insurance is reasonably available. We hope that this new subsection provides a satisfactory answer to the very pertinent questions which Senator Anderson, in particular, asked about this aspect of the bill.

The next change proposed arises out of the suggestion of several members of the Committee that the total liability authorized to be assumed by the Government should be limited. Subsection (f) would accomplish this result. It is patterned after section 170d. of the Atomic Energy

Act (42 U.S.C. 2210(d)) and establishes a maximum liability of $500,000,000, the same figure as appears in the Atomic Energy Act. The effect of subsection (f) is not only to limit the potential liability of the Government in connection with any single incident but also to limit the liability to third parties of indemnified contractors and subcontractors.

Subsection (g) of our draft would require NASA to use the facilities and services of private insurance organizations to the maximum extent practicable in administering the provisions of this section. This provision is identical to its counterpart in the Atomic Energy Act.

Finally, we would propose adding a definition of "contractor" to make clear that indemnification coverage may be extended to subcontractors on the same basis and to the same extent that it is available to prime contractors. At the present time, the Department of the Air Force interprets and administers the provisions of 10 U.S.C. 2354 so as to embrace subcontractors. It is important to clarify this matter beyond doubt in connection with NASA's revised proposal, because subsection (f), which serves to limit the liability of "contractors," must be made to apply clearly

to subcontractors as well if this provision is to have the effect intended.

I have completed, Mr. Chairman, my explanation of the changes we would propose be made in section 1(e) of S.1857 relating to the subject of indemnification.

At the close of the hearing on May 16, the Chairman requested information regarding the comparative experience of NASA and the military departments in placing contracts for work that involves risks of an unusually hazardous nature. While a useful comparison is difficult to make, the available information has been transmitted to the Chairman for inclusion in the record.